IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1742 OF 1990
To
FIRST APPEAL NO. 1745 OF 1990
With
CROSS OBJECTION (STAMP) NOS. 13664 OF 1991, 13665 OF 1991 And 13669 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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THE ORIENTAL INSURANCE CO LTD - Appellant(s)
Versus
MANJULABEN, WD/O FULABHAI KESHAVBHAI PATEL & ORS. - Respondent (s)

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Appearance :
Shri Rajni H. Mehta for Appellant(s).
Shri K.C. Shah for Respondent(s) : 1 - 3.
None for Respondent(s) : 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/08/2007

ORAL JUDGMENT

It is reported that respondent No.1-Chandrakantaben Vitthaldas Shah in First Appeal No.1745 of 1990 has expired. As her legal representatives are already on record, her name can safely be deleted with an endorsement against the names of respondent Nos.2, 3 and 4, "in their personal capacity and as legal representatives of deceased respondent No.1". Office to make necessary corrections in the cause title of First Appeal No.1745 of 1990.

2. The appellant-Insurance Company, being aggrieved by the award dated 2nd August, 1988 passed by the learned Motor Accident Claims Tribunal (Auxiliary), Baroda in M.A.C.P. Nos. 437, 438, 439 and 440, all of 1985, has filed this appeals submitting, *inter alia*, that the Insurance Company would not be answerable to the claims made by the claimants in view of the findings recorded by the learned Tribunal that the deceased was travelling as a passenger in the goods vehicle.

3. The claimants have filed Cross Objection (Stamp) No.13664 of 1991 in First Appeal No.1742 of 1990, Cross Objection (Stamp) No.13665 of 1991 in First Appeal No.1743 of 1990 and Cross Objection (Stamp) No.13669 of 1990 in First Appeal No.1744 of 1990.

4. Placing reliance upon a judgement of the Supreme Court in the matter of ***New India Assurance Co. Ltd. vs. Vedwati & Ors.***, [***AIR 2007 SC 1334***], Shri Rajni Mehta, learned Counsel for the Insurance Company, submitted that as the passengers were carried for hire or reward or with their goods in the goods vehicle and as the risk of such passengers were not covered under the terms of the policy, the learned Tribunal below was unjustified in holding the Insurance Company liable and answerable.

5. Shri K.C. Shah, learned Counsel for the respondents-claimants, however, submitted that the judgement of the Supreme Court would not apply to the facts of the case.

6. In the matter of ***New India Assurance Co. Ltd. vs. Vedwati & Ors.***, (*supra*), the Supreme Court has observed that the provisions of the Act do not enjoin any statutory liability on the owner of the vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor. This would mean that as there is no statutory liability upon the owner of the vehicle to cover the risk of the passengers, the Insurance Company cannot be held liable except in a contract to the contrary where on payment of extra premium, etc., the risk of passengers is covered in the goods vehicle.

7. In view of the findings recorded by the learned Tribunal below, the Insurance Company cannot be held liable to make the payment. So far as the Cross Objections are concerned, in view of the fact that the appeals filed by the Insurance Company are being allowed, the Cross Objections cannot be allowed against the Insurance Company.

8. All the appeals are allowed and all the Cross Objections are rejected. The Insurance Company is exonerated of its liability. If the Insurance Company has deposited the amount with the subordinate Court and the amount is still lying with it, then, the Insurance Company would be entitled to refund of the same on an application to the subordinate Court. In case of such refund, the claimants would be entitled to recover the amount from the owner and driver of the truck, who have not challenged their liability against the claimants. In case the amount has already been paid to or withdrawn by the claimants, then, the Insurance Company would be entitled to recover the said amount with 6% interest per annum from the date of deposit till the date of recovery/realisation, from the driver and owner of the truck. No order as to costs.

[R.S.Garg, J.]

*kamlesh**